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TELEX

RCA 233663

WUD 125547

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RECORDATION NO. 106 Filed 1425

AUG 8 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

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Date AUG 8 1979

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ICC Washington, D. C.

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RECORDATION NO. 10706-A Filed 1425

AUG 8 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

August 3, 1979

Meridian & Bigbee Railroad Company
Conditional Sale Agreement Dated as of May 31, 1979
9.75% Conditional Sale Indebtedness Due 1999

Dear Mr. Homme:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of Meridian & Bigbee Railroad Company are counterparts of the following documents:

New member
(1) Conditional Sale Agreement dated as of May 31, 1979, among Itel Railcar, Inc., Meridian & Bigbee Railroad Company and American Can Company; and

- A
(2) Agreement and Assignment dated as of May 31, 1979, between Itel Railcar, Inc. and The Chase Manhattan Bank (National Association), as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Assignee-Agent:

The Chase Manhattan Bank (National Association),
One New York Plaza,
New York, N.Y. 10015

RECEIVED

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RECEIVED

Counterpart
Alan C. Hughes

(2) Builder-Vendor:

Itel Railcar, Inc.,
1870 The Exchange Suite 260,
Atlanta, Georgia 31339

(3) Railroad:

Meridian & Bigbee Railroad Company,
119 22nd Avenue South,
Meridian, Mississippi 39301

(4) Guarantor:

American Can Company,
American Lane,
Greenwich, Connecticut 06830

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Builder-Vendor, the Railroad and the Guarantor.

The equipment covered by the aforementioned documents consists of the following:

300 70-ton 50.5 ft. box cars with rigid under frames, AAR Mechanical Designation XM, with Plate C, bearing identifying numbers of the Railroad, MB 5000-5299, both inclusive.

Also enclosed is a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting 1 document).

Please stamp all counterparts of the enclosed documents, retain one copy of the instruments for your files and forward the remaining counterparts to me. Thank you for your assistance.

Sincerely,


Jacqueline B. Goodyear

H. G. Homme, Esq.,
Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encl.

ZZ

Interstate Commerce Commission
Washington, D.C. 20423

8/8/79

OFFICE OF THE SECRETARY

Jacqueline B. Goodyear
Cravath Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/8/79 at 12:40pm, and assigned re-recording number(s).

10706 & 10706-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

1006

RECORDATION NO. Filed 1425

AUG 8 1979 12 40 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

MERIDIAN & BIGBEE RAILROAD COMPANY,
the Railroad

and

AMERICAN CAN COMPANY,
the Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 31, 1979, among each of ITEL RAILCAR, INC. (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), MERIDIAN & BIGBEE RAILROAD COMPANY, a Mississippi corporation (the "Railroad") and AMERICAN CAN COMPANY, a New Jersey corporation (the "Guarantor").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to The Chase Manhattan Bank (National Association) acting as agent (the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement") among the Agent, the Railroad, the Guarantor and the parties named in Schedule A thereto (the "Investors"). The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B

hereto and/or purchase from other manufacturers equipment of substantially the same design and specifications (all such units of Equipment with respect to the Builder, regardless of origin, being hereinafter called "its Equipment") and will sell and deliver to the Railroad at the place of delivery set forth in Schedule B hereto or such other builder's manufacturing site, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"), or, in the case of units constructed by other manufacturers, each such unit shall be constructed substantially in accordance with the Specifications. The Builder agrees that the design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission regulations and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent referred to in Article 8 hereof) will be new railroad equipment. The Builder represents and warrants to the Railroad that it or its parent, Itel Corporation, has available to it sufficient order positions with other car manufacturers to comply with the first sentence of this Article 2 (which order positions will continue to be available in order to satisfy the Builder's obligations hereunder). Anything contained herein to the contrary notwithstanding, the Builder agrees that (a) the Railroad will receive first priority on Equipment manufactured by it at its plant at Cartersville, Georgia, and (b) the Builder will not sell and deliver to the Railroad any Equipment manufactured by other manufacturers unless expressly consented to by the Railroad.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid by the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified

in clause (c) or (d) of Article 17 hereof or if any event of default (as described in said Article 17), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing. It is understood by the Builder that with respect to the outside delivery date of December 31, 1979, of the Equipment, time is of the essence.

The Builder's obligation as to time of delivery with respect to its own equipment and to equipment originating from other car manufacturers is subject, however, to delays resulting from causes beyond the Builder's and such other car manufacturers' reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors; provided, however, that the foregoing limitations on the delivery obligations of the Builder shall only be operative and effective when the causes enumerated above prevent delivery by both the Builder to the Railroad and such other car manufacturers to the Builder. In the event the Builder's failure to deliver Equipment is excused beyond March 31, 1980, by the preceding sentence, the Railroad shall have the option, exercised by written notice to the Builder, at any time subsequent to March 31, 1980, to exclude from this Agreement, without further obligation of either party, any unit or units of Equipment not yet delivered and accepted pursuant to Article 4 hereof.

Any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence or the last sentence of the preceding paragraph, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom and, unless excluded pursuant to the last sentence of the preceding paragraph, a separate purchase order agreement applying to the excluded units containing the applicable provisions of this Agreement other than the financing terms. If the Builder's failure to deliver Equipment excluded from this Agreement (other than an exclusion pursuant to the last sentence of the preceding paragraph) was excused by any of the causes enumerated in the preceding paragraph, the Builder shall deliver such Equipment as soon as available (but in any event not later than March 31, 1981), in which

case the Railroad shall accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder. In the event the Builder is still unable to deliver Equipment by March 31, 1981, by reason of any of the causes enumerated in the preceding paragraph, neither the Railroad nor the Builder shall have any obligation with respect to Equipment not delivered and accepted pursuant to Article 4 hereof on or before March 31, 1981.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of its Equipment in accordance with its standard quality control practices and shall grant authorized inspectors of the Railroad the right to such similar inspections as the Railroad may request. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

All of the foregoing paragraph shall apply with respect to any unit of Equipment originating from any other manufacturer in that the Builder shall arrange for the same rights of inspection of materials and construction for the authorized inspectors of the Railroad at such other manufacturer's plant during construction and an inspection by such authorized representatives upon completion of each unit at such other manufacturer's plant prior to the Builder's acceptance from any order position relating to such unit.

On acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the

risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such acceptance shall not thereby relieve the Builder of its warranty referred to in Article 15 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad pursuant to Purchase Order No. 3891 dated November 27, 1978, from the Railroad to the Builder and Specification No. 78-3 (W.O. 0101) dated September 20, 1978, and revised November 16, 1978. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, plus freight charges, if any.

For the purpose of making settlement, the Equipment of the Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined)
 (i) an amount equal to 14.91% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (including the supplemental invoice or invoices hereinafter provided for) in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$9,700,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 40 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 40, result in an amount ending in an integral

cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "Indebtedness") but if any Closing Date occurs on or after March 15, 1980, the first and second installments of Indebtedness so incurred in respect of such Closing Date will both be made on September 15, 1980.

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Repayment Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The installments of the Indebtedness shall be payable semiannually on March 15 and September 15 in each year commencing on March 15, 1980, to and including September 15, 1999; provided, however, notwithstanding anything to the contrary herein, if any Equipment is settled for on a Closing Date occurring on or after March 15, 1980, the installment of Indebtedness that would have been payable on March 15, 1980,

if all Closing Dates had occurred prior to March 15, 1980, shall be payable on and together with the installment due on September 15, 1980. The unpaid portion of the Indebtedness shall bear interest from the respective Closing Dates on which incurred at the rate of 9.75% per annum payable to the extent accrued, on March 15 and September 15 in each year, commencing March 15, 1980 (on September 15, 1980, in the case of Indebtedness incurred on or after March 15, 1980). The Railroad may at its option on any March 15 or September 15 commencing on or after September 15, 1994, upon not less than 15 business days' prior written notice to the Agent and the Investors, prepay without premium the entire unpaid Indebtedness together with interest thereon to the date of payment.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after August 1, 1979, and prior to the date set forth in Item 2 of Schedule A hereto (the "Cut-Off Date"), not more than 24 business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; it being understood that any Group of the Equipment accepted prior to the 15th day of each month will be settled for on the 25th day of such month and Equipment accepted on or after the 15th day of each month will be settled for on the 10th day of the following month. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided

in this Article 4 and in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of Indebtedness prior to the date it becomes due.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and shall pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Railroad shall have made all its payments

under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying

number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or the name of the Vendor followed by the words "Agent, Owner", or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and interests in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed by the Railroad in all public offices where this Agreement shall have been filed.

Except as provided in the preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall fully inform the Vendor in regard thereto promptly after it has knowledge of such Casualty Occurrence. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$200,000 (or such lesser amount as the Railroad may elect), the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such

event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but no less than 10 days prior to the due date of the next semiannual installment of Indebtedness, in whole or in part, to prepay installments of Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment or cabooses) from the Railroad or others first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence (provided, however, that the Vendor shall not pay more than 85.09% of the cost of any such unit or units of replacement equipment). Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of a mechanical officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment to the Vendor does not exceed 85.09% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 1/20th of such original cost for each year in service. In case any money is applied pursuant to this Article 8 to prepay Indebtedness, it shall be so applied to reduce each installment of Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less an amount which bears the same ratio to the aggregate of all payments made by the Vendee under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with

respect to such Casualty Occurrence bears to the original Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor in such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith in addition to any settlement documents which may be required pursuant to Article 16 hereof:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is

new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/20th of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following and in such manner as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus

such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto to the extent and against risks comparable to those insured against by other railroads on similar equipment and, in any event, comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor the due and punctual performance of all obligations of the Railroad under this Agreement and the Finance Agreement and unconditionally guarantees to the Vendor that all sums payable by the Railroad under this Agreement and the Finance Agreement (including, but not limited to, all sums payable by the Railroad with respect to the Purchase Price of the Equipment) will be promptly paid when due in accordance with the provisions hereof and thereof, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Railroad in any such obligations or payment the Guarantor

agrees punctually to perform or pay the same, irrespective of any enforcement against the Railroad of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligation hereunder shall be absolute and unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Finance Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor; and the Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof or thereof in whole or in part or of any default hereunder or thereunder and all notices with respect to this Agreement or the Finance Agreement and all demands whatsoever hereunder or thereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or under the Finance Agreement or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder or thereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall be subrogated to all rights of the Vendor against the Railroad and with respect to the Equipment to the extent of the amount so paid, but the rights of the Guarantor against the Railroad and with respect to the Equipment pursuant to such subrogation shall be subordinate in all respects to the rights of the Vendor and such rights of the Guarantor shall be enforceable only after, and subject to, full payment to the Vendor of all amounts payable hereunder whether or not then due.

ARTICLE 10. Maintenance; Compliance with Laws.
The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all material respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules

affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use; Leasing. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding one year with any affiliate or any other solvent United States corporation, from and after delivery of such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; pro-

construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities referred to in Article 15 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 14 and 15 hereof, Schedule A hereto and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad and the Guarantor recognize that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Guarantor each expressly represent for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment of the Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad or the Guarantor against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to the Agent under the Finance Agreement, to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of an amount equal to the Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment of the Builder for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's security interest in such units in the manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur

and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within 10 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 15 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after the commencement of such proceedings; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the Indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may

be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor, as the case may be, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) the Guarantor shall default in any payment of any indebtedness for borrowed money beyond any period of grace provided with respect thereto, and (i) the effect of such default, if it occurs prior to the stated maturity or scheduled date for the payment thereof, is to cause such indebtedness to become due prior to the stated maturity or scheduled date for the payment thereof and (ii) the aggregate principal amount of indebtedness (including the indebtedness, if any, with respect to which there exists a default in payment) which becomes due prior to the stated maturity or scheduled date for payment exceeds \$25,000,000; or if final judgment for the payment of money which exceeds \$1,000,000 shall be rendered against the Guarantor and the same shall not be discharged, or provision made for the discharge thereof in accordance with its terms, within 60 days from the entry thereof, or an appeal therefrom or other appropriate proceeding for the appellate review thereof, shall not be secured or if such appeal be taken and on such appeal the same shall be affirmed and the Guarantor shall not discharge said judgment within 60 days after the entry of the order or decree of affirmance;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued

and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad or the Guarantor.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad, or if the Guarantor has suitable rail storage facilities, at such facilities for the delivery of the Equipment to the

Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad or any affiliate of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad or the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad and the Guarantor agree to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad or the Guarantor requiring specific performance hereof. The Railroad and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is

made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then

in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay

or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and any assignment of this Agreement (including the fees and expenses of an agent, if the assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be

properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad at Meridian & Bigbee Railroad Company, 119 22nd Avenue South, Meridian, Mississippi 39301, attention of Mr. Marvin V. Dendy, President, or to the Guarantor, at American Can Company, American Lane, Greenwich, Connecticut 06830, attention of Mr. C. Richard Pederson, Senior Vice President and General Counsel,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor, the Railroad and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor, the Railroad and the Guarantor.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 22 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Alabama except that perfection shall be governed by the laws of the State of Mississippi; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the

several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located and any rights arising out of the marking on the units of the Equipment.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Agreement shall not be effective unless and until it is executed and delivered in the State of Alabama by the Railroad.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

MERIDIAN & BIGBEE RAILROAD
COMPANY.

[Corporate Seal]

by

Marvin V. Bundy
President

Attest:

Attest:

Blair W. Rennie
Assistant Secretary

AMERICAN CAN COMPANY,

by

[Corporate Seal]

Senior Vice President

Attest:

Assistant Secretary

ITEL RAILCAR, INC.,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

Guarantee By Itel Corporation

Itel Corporation, a Delaware corporation, hereby unconditionally guarantees all of the obligations, representations and warranties of the Builder named in the foregoing Conditional Sale Agreement.

Dated as of May 31, 1979

ITEL CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ALABAMA,)
COUNTY OF CHOCTAW,) ss.:
)

On this 4th day of Aug. 1979, before me personally appeared MARVIN V. DENDY, to me personally known, who, being by me duly sworn, says that he is President of MERIDIAN & BIGBEE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Orell M. Ford

Notary Public

[Notarial Seal]

My Commission Expires 6-26-80

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF FAIRFIELD,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of AMERICAN CAN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF _____,)
) ss.:
COUNTY OF _____,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of ITEL RAILCAR, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF _____,)
) ss.:
COUNTY OF _____,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

SCHEDULE A

to

Conditional Sale Agreement

- Item 1: Itel Railcar, Inc., 1870 The Exchange, Suite 260, Atlanta, Georgia 31339, attention of Mr. Hubert P. Hahn, Executive Vice President.
- Item 2: September 15, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter in this Schedule A called the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER EXCEPT FOR THE OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 15 OF THE AGREEMENT AND ITEM 4 OF THIS SCHEDULE A.

- Item 4: Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability,

claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any unit of Equipment, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Builder, or article or material specified by the Railroad and not manufactured by the Builder, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any unit of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against the Builder, and the use of any unit of Equipment is enjoined, the Builder shall, at its own expense and at its option, either procure for the Railroad the right to continue using such unit of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, the Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Builder for use in or about the construction or operation of the

units of Equipment on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Builder further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to it from which liability may be charged against the Builder hereunder. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

SCHEDULE B

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Foad Numbers (Inclusive)</u>	<u>Estimated* Time and Place of Delivery</u>
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	63	\$38,000.00	\$2,394,000	MB 5000- 5062	August 1979 at Carters- ville, Georgia
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	69	\$38,000.00	\$2,622,000	MB 5063- 5131	September 1979 at Carters- ville, Georgia
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	108	\$38,000.00	\$4,104,00	MB 5132- 5239	October 1979 at Carters- ville, Georgia
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	60	\$38,000.000	\$2,280,000	MB 5240- 5299	November 1979 at Carters- ville, Georgia

* Regardless of individual deliveries in any particular month all deliveries shall be completed by December 31, 1979; provided, however, that in the event the Builder is unable to complete all deliveries of Equipment by December 31, 1979, by reason of any of the causes enumerated in the first sentence of the second paragraph of Article 3 affecting its own manufacturing operations, such date shall be March 31, 1980.

Dated as of May 31, 1979,

ITEL RAILCAR, INC.,

and

MERIDIAN & BIGBEE RAILROAD COMPANY,
the Railroad

AMERICAN CAN COMPANY,

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979,

ITEL RAYLCAR, INC.,

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 31, 1979, among each of ITEL RAILCAR, INC. (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), MERIDIAN & BIGBEE RAILROAD COMPANY, a Mississippi corporation (the "Railroad") and AMERICAN CAN COMPANY, a New Jersey corporation (the "Guarantor").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to The Chase Manhattan Bank (National Association) acting as agent (the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement") among the Agent, the Railroad, the Guarantor and the parties named in Schedule A thereto (the "Investors"). The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B

hereto and/or purchase from other manufacturers equipment of substantially the same design and specifications (all such units of Equipment with respect to the Builder, regardless of origin, being hereinafter called "its Equipment") and will sell and deliver to the Railroad at the place of delivery set forth in Schedule B hereto or such other builder's manufacturing site, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"), or, in the case of units constructed by other manufacturers, each such unit shall be constructed substantially in accordance with the Specifications. The Builder agrees that the design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission regulations and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent referred to in Article 8 hereof) will be new railroad equipment. The Builder represents and warrants to the Railroad that it or its parent, ITEL Corporation, has available to it sufficient order positions with other car manufacturers to comply with the first sentence of this Article 2 (which order positions will continue to be available in order to satisfy the Builder's obligations hereunder). Anything contained herein to the contrary notwithstanding, the Builder agrees that (a) the Railroad will receive first priority on Equipment manufactured by it at its plant at Cartersville, Georgia, and (b) the Builder will not sell and deliver to the Railroad any Equipment manufactured by other manufacturers unless expressly consented to by the Railroad.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid by the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified

in clause (c) or (d) of Article 17 hereof or if any event of default (as described in said Article 17), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing. It is understood by the Builder that with respect to the outside delivery date of December 31, 1979, of the Equipment, time is of the essence.

The Builder's obligation as to time of delivery with respect to its own equipment and to equipment originating from other car manufacturers is subject, however, to delays resulting from causes beyond the Builder's and such other car manufacturers' reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors; provided, however, that the foregoing limitations on the delivery obligations of the Builder shall only be operative and effective when the causes enumerated above prevent delivery by both the Builder to the Railroad and such other car manufacturers to the Builder. In the event the Builder's failure to deliver Equipment is excused beyond March 31, 1980, by the preceding sentence, the Railroad shall have the option, exercised by written notice to the Builder, at any time subsequent to March 31, 1980, to exclude from this Agreement, without further obligation of either party, any unit or units of Equipment not yet delivered and accepted pursuant to Article 4 hereof.

Any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence or the last sentence of the preceding paragraph, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom and, unless excluded pursuant to the last sentence of the preceding paragraph, a separate purchase order agreement applying to the excluded units containing the applicable provisions of this Agreement other than the financing terms. If the Builder's failure to deliver Equipment excluded from this Agreement (other than an exclusion pursuant to the last sentence of the preceding paragraph) was excused by any of the causes enumerated in the preceding paragraph, the Builder shall deliver such Equipment as soon as available (but in any event not later than March 31, 1981), in which

case the Railroad shall accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder. In the event the Builder is still unable to deliver Equipment by March 31, 1981, by reason of any of the causes enumerated in the preceding paragraph, neither the Railroad nor the Builder shall have any obligation with respect to Equipment not delivered and accepted pursuant to Article 4 hereof on or before March 31, 1981.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of its Equipment in accordance with its standard quality control practices and shall grant authorized inspectors of the Railroad the right to such similar inspections as the Railroad may request. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

All of the foregoing paragraph shall apply with respect to any unit of Equipment originating from any other manufacturer in that the Builder shall arrange for the same rights of inspection of materials and construction for the authorized inspectors of the Railroad at such other manufacturer's plant during construction and an inspection by such authorized representatives upon completion of each unit at such other manufacturer's plant prior to the Builder's acceptance from any order position relating to such unit.

On acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the

risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such acceptance shall not thereby relieve the Builder of its warranty referred to in Article 15 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad pursuant to Purchase Order No. 3891 dated November 27, 1978, from the Railroad to the Builder and Specification No. 78-3 (W.O. 0101) dated September 20, 1978, and revised November 16, 1978. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, plus freight charges, if any.

For the purpose of making settlement, the Equipment of the Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined)
 (i) an amount equal to 14.91% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (including the supplemental invoice or invoices hereinafter provided for) in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$9,700,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 40 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 40, result in an amount ending in an integral

cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "Indebtedness") but if any Closing Date occurs on or after March 15, 1980, the first and second installments of Indebtedness so incurred in respect of such Closing Date will both be made on September 15, 1980.

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Repayment Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The installments of the Indebtedness shall be payable semiannually on March 15 and September 15 in each year commencing on March 15, 1980, to and including September 15, 1999; provided, however, notwithstanding anything to the contrary herein, if any Equipment is settled for on a Closing Date occurring on or after March 15, 1980, the installment of Indebtedness that would have been payable on March 15, 1980,

if all Closing Dates had occurred prior to March 15, 1980, shall be payable on and together with the installment due on September 15, 1980. The unpaid portion of the Indebtedness shall bear interest from the respective Closing Dates on which incurred at the rate of 9.75% per annum payable to the extent accrued, on March 15 and September 15 in each year, commencing March 15, 1980 (on September 15, 1980, in the case of Indebtedness incurred on or after March 15, 1980). The Railroad may at its option on any March 15 or September 15 commencing on or after September 15, 1994, upon not less than 15 business days' prior written notice to the Agent and the Investors, prepay without premium the entire unpaid Indebtedness together with interest thereon to the date of payment.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after August 1, 1979, and prior to the date set forth in Item 2 of Schedule A hereto (the "Cut-Off Date"), not more than 24 business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; it being understood that any Group of the Equipment accepted prior to the 15th day of each month will be settled for on the 25th day of such month and Equipment accepted on or after the 15th day of each month will be settled for on the 10th day of the following month. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided

in this Article 4 and in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of Indebtedness prior to the date it becomes due.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and shall pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Railroad shall have made all its payments

under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying

number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or the name of the Vendor followed by the words "Agent, Owner", or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and interests in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed by the Railroad in all public offices where this Agreement shall have been filed.

Except as provided in the preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall fully inform the Vendor in regard thereto promptly after it has knowledge of such Casualty Occurrence. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$200,000 (or such lesser amount as the Railroad may elect), the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such

event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but no less than 10 days prior to the due date of the next semiannual installment of Indebtedness, in whole or in part, to prepay installments of Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment or cabooses) from the Railroad or others first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence (provided, however, that the Vendor shall not pay more than 85.09% of the cost of any such unit or units of replacement equipment). Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of a mechanical officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment to the Vendor does not exceed 85.09% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 1/20th of such original cost for each year in service. In case any money is applied pursuant to this Article 8 to prepay Indebtedness, it shall be so applied to reduce each installment of Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less an amount which bears the same ratio to the aggregate of all payments made by the Vendee under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with

respect to such Casualty Occurrence bears to the original Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor in such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith in addition to any settlement documents which may be required pursuant to Article 16 hereof:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is

new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/20th of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following and in such manner as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus

such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto to the extent and against risks comparable to those insured against by other railroads on similar equipment and, in any event, comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor the due and punctual performance of all obligations of the Railroad under this Agreement and the Finance Agreement and unconditionally guarantees to the Vendor that all sums payable by the Railroad under this Agreement and the Finance Agreement (including, but not limited to, all sums payable by the Railroad with respect to the Purchase Price of the Equipment) will be promptly paid when due in accordance with the provisions hereof and thereof, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Railroad in any such obligations or payment the Guarantor

agrees punctually to perform or pay the same, irrespective of any enforcement against the Railroad of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligation hereunder shall be absolute and unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Finance Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor; and the Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof or thereof in whole or in part or of any default hereunder or thereunder and all notices with respect to this Agreement or the Finance Agreement and all demands whatsoever hereunder or thereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or under the Finance Agreement or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder or thereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall be subrogated to all rights of the Vendor against the Railroad and with respect to the Equipment to the extent of the amount so paid, but the rights of the Guarantor against the Railroad and with respect to the Equipment pursuant to such subrogation shall be subordinate in all respects to the rights of the Vendor and such rights of the Guarantor shall be enforceable only after, and subject to, full payment to the Vendor of all amounts payable hereunder whether or not then due.

ARTICLE 10. Maintenance; Compliance with Laws.
The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all material respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules

affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use; Leasing. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding one year with any affiliate or any other solvent United States corporation, from and after delivery of such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; pro-

vided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remain in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this Agreement; provided, however, that the Railroad shall not be required to indemnify, protect or hold harmless the Builder from and against any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort (including but not limited to product or strict liability imposed by law upon the Builder) by the

Builder or any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Patent Indemnities; Builder's Warranty. The Builder's warranty of material and workmanship and its patent indemnification agreement are set forth in Items 3 and 4, respectively, of Schedule A hereto. The patent indemnification agreements of the Builder shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever. Anything contained herein to the contrary notwithstanding, with respect to Equipment manufactured by a domestic builder other than the Builder, the Railroad shall first proceed and reasonably exhaust the appropriate remedies available to it against such other builder (before proceeding hereunder against the Builder) of Equipment under the warranties and indemnifications of such other builder with respect to such Equipment.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Articles 8 and 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition (a) to a railroad company wholly owned by the Guarantor or (b) to a railroad company which has outstanding equipment obligations rated within the first three grades by a recognized rating agency of national reputation, is organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to

construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities referred to in Article 15 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 14 and 15 hereof, Schedule A hereto and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad and the Guarantor recognize that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Guarantor each expressly represent for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment of the Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad or the Guarantor against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to the Agent under the Finance Agreement, to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of an amount equal to the Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment of the Builder for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's security interest in such units in the manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur

and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within 10 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 15 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after the commencement of such proceedings; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the Indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may

be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor, as the case may be, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) the Guarantor shall default in any payment of any indebtedness for borrowed money beyond any period of grace provided with respect thereto, and (i) the effect of such default, if it occurs prior to the stated maturity or scheduled date for the payment thereof, is to cause such indebtedness to become due prior to the stated maturity or scheduled date for the payment thereof and (ii) the aggregate principal amount of indebtedness (including the indebtedness, if any, with respect to which there exists a default in payment) which becomes due prior to the stated maturity or scheduled date for payment exceeds \$25,000,000; or if final judgment for the payment of money which exceeds \$1,000,000 shall be rendered against the Guarantor and the same shall not be discharged, or provision made for the discharge thereof in accordance with its terms, within 60 days from the entry thereof, or an appeal therefrom or other appropriate proceeding for the appellate review thereof, shall not be secured or if such appeal be taken and on such appeal the same shall be affirmed and the Guarantor shall not discharge said judgment within 60 days after the entry of the order or decree of affirmance;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued

and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad or the Guarantor.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad, or if the Guarantor has suitable rail storage facilities, at such facilities for the delivery of the Equipment to the

Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad or any affiliate of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad or the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad and the Guarantor agree to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad or the Guarantor requiring specific performance hereof. The Railroad and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is

made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then

in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay

or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and any assignment of this Agreement (including the fees and expenses of an agent, if the assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be

properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad at Meridian & Bigbee Railroad Company, 119 22nd Avenue South, Meridian, Mississippi 39301, attention of Mr. Marvin V. Dendy, President, or to the Guarantor, at American Can Company, American Lane, Greenwich, Connecticut 06830, attention of Mr. C. Richard Pederson, Senior Vice President and General Counsel,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor, the Railroad and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor, the Railroad and the Guarantor.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 22 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Alabama except that perfection shall be governed by the laws of the State of Mississippi; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the

several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located and any rights arising out of the marking on the units of the Equipment.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Agreement shall not be effective unless and until it is executed and delivered in the State of Alabama by the Railroad.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

MERIDIAN & BIGBEE RAILROAD
COMPANY,

[Corporate Seal]

by

Attest:

President

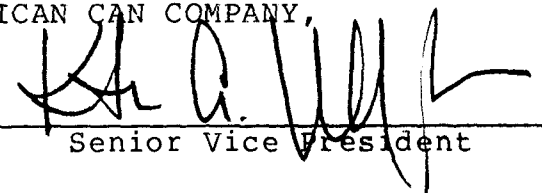
Assistant Secretary

AMERICAN CAN COMPANY,

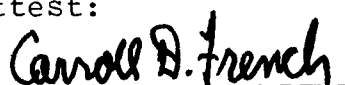
by

[Corporate Seal]

Attest:



Senior Vice President



Assistant Secretary

ITEL RAILCAR, INC.,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

Guarantee By Itel Corporation

Itel Corporation, a Delaware corporation, hereby unconditionally guarantees all of the obligations, representations and warranties of the Builder named in the foregoing Conditional Sale Agreement.

Dated as of May 31, 1979

ITEL CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ALABAMA,)
) ss.:
COUNTY OF CHOCTAW,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is President of MERIDIAN & BIGBEE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF FAIRFIELD,)

On this 3rd day of August 1979, before me personally appeared KENNETH D. YARLEN, JR., to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of AMERICAN CAN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Darryl W. Hargis III
Notary Public

[Notarial Seal]

My Commission Expires

HARRY W. HARGIS, III
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1984

SCHEDULE A

to

Conditional Sale Agreement

- Item 1: Itel Railcar, Inc., 1870 The Exchange, Suite 260, Atlanta, Georgia 31339, attention of Mr. Hubert P. Hahn, Executive Vice President.
- Item 2: September 15, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter in this Schedule A called the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER EXCEPT FOR THE OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 15 OF THE AGREEMENT AND ITEM 4 OF THIS SCHEDULE A.

- Item 4: Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability,

claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any unit of Equipment, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Builder, or article or material specified by the Railroad and not manufactured by the Builder, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any unit of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against the Builder, and the use of any unit of Equipment is enjoined, the Builder shall, at its own expense and at its option, either procure for the Railroad the right to continue using such unit of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, the Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Builder for use in or about the construction or operation of the

units of Equipment on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Builder further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to it from which liability may be charged against the Builder hereunder. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

SCHEDULE B

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Poad Numbers (Inclusive)</u>	<u>Estimated* Time and Place of Delivery</u>
Ite l Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	63	\$38,000.00	\$2,394,000	MB 5000- 5062	August 1979 at Carters- ville, Georgia
Ite l Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	69	\$38,000.00	\$2,622,000	MB 5063- 5131	September 1979 at Carters- ville, Georgia
Ite l Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	108	\$38,000.00	\$4,104,00	MB 5132- 5239	October 1979 at Carters- ville, Georgia
Ite l Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	60	\$38,000.000	\$2,280,000	MB 5240- 5299	November 1979 at Carters- ville, Georgia

* Regardless of individual deliveries in any particular month all deliveries shall be completed by December 31, 1979; provided, however, that in the event the Builder is unable to complete all deliveries of Equipment by December 31, 1979, by reason of any of the causes enumerated in the first sentence of the second paragraph of Article 3 affecting its own manufacturing operations, such date shall be March 31, 1980.

CONDITIONAL SALE AGREEMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

MERIDIAN & BIGBEE RAILROAD COMPANY,
the Railroad

and

AMERICAN CAN COMPANY,
the Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 31, 1979, among each of ITEL RAILCAR, INC. (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), MERIDIAN & BIGBEE RAILROAD COMPANY, a Mississippi corporation (the "Railroad") and AMERICAN CAN COMPANY, a New Jersey corporation (the "Guarantor").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to The Chase Manhattan Bank (National Association) acting as agent (the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement") among the Agent, the Railroad, the Guarantor and the parties named in Schedule A thereto (the "Investors"). The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B

hereto and/or purchase from other manufacturers equipment of substantially the same design and specifications (all such units of Equipment with respect to the Builder, regardless of origin, being hereinafter called "its Equipment") and will sell and deliver to the Railroad at the place of delivery set forth in Schedule B hereto or such other builder's manufacturing site, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"), or, in the case of units constructed by other manufacturers, each such unit shall be constructed substantially in accordance with the Specifications. The Builder agrees that the design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission regulations and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent referred to in Article 8 hereof) will be new railroad equipment. The Builder represents and warrants to the Railroad that it or its parent, Itel Corporation, has available to it sufficient order positions with other car manufacturers to comply with the first sentence of this Article 2 (which order positions will continue to be available in order to satisfy the Builder's obligations hereunder). Anything contained herein to the contrary notwithstanding, the Builder agrees that (a) the Railroad will receive first priority on Equipment manufactured by it at its plant at Cartersville, Georgia, and (b) the Builder will not sell and deliver to the Railroad any Equipment manufactured by other manufacturers unless expressly consented to by the Railroad.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid by the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified

in clause (c) or (d) of Article 17 hereof or if any event of default (as described in said Article 17), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing. It is understood by the Builder that with respect to the outside delivery date of December 31, 1979, of the Equipment, time is of the essence.

The Builder's obligation as to time of delivery with respect to its own equipment and to equipment originating from other car manufacturers is subject, however, to delays resulting from causes beyond the Builder's and such other car manufacturers' reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors; provided, however, that the foregoing limitations on the delivery obligations of the Builder shall only be operative and effective when the causes enumerated above prevent delivery by both the Builder to the Railroad and such other car manufacturers to the Builder. In the event the Builder's failure to deliver Equipment is excused beyond March 31, 1980, by the preceding sentence, the Railroad shall have the option, exercised by written notice to the Builder, at any time subsequent to March 31, 1980, to exclude from this Agreement, without further obligation of either party, any unit or units of Equipment not yet delivered and accepted pursuant to Article 4 hereof.

Any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence or the last sentence of the preceding paragraph, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom and, unless excluded pursuant to the last sentence of the preceding paragraph, a separate purchase order agreement applying to the excluded units containing the applicable provisions of this Agreement other than the financing terms. If the Builder's failure to deliver Equipment excluded from this Agreement (other than an exclusion pursuant to the last sentence of the preceding paragraph) was excused by any of the causes enumerated in the preceding paragraph, the Builder shall deliver such Equipment as soon as available (but in any event not later than March 31, 1981), in which

case the Railroad shall accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder. In the event the Builder is still unable to deliver Equipment by March 31, 1981, by reason of any of the causes enumerated in the preceding paragraph, neither the Railroad nor the Builder shall have any obligation with respect to Equipment not delivered and accepted pursuant to Article 4 hereof on or before March 31, 1981.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of its Equipment in accordance with its standard quality control practices and shall grant authorized inspectors of the Railroad the right to such similar inspections as the Railroad may request. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

All of the foregoing paragraph shall apply with respect to any unit of Equipment originating from any other manufacturer in that the Builder shall arrange for the same rights of inspection of materials and construction for the authorized inspectors of the Railroad at such other manufacturer's plant during construction and an inspection by such authorized representatives upon completion of each unit at such other manufacturer's plant prior to the Builder's acceptance from any order position relating to such unit.

On acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the

risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such acceptance shall not thereby relieve the Builder of its warranty referred to in Article 15 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad pursuant to Purchase Order No. 3891 dated November 27, 1978, from the Railroad to the Builder and Specification No. 78-3 (W.O. 0101) dated September 20, 1978, and revised November 16, 1978. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, plus freight charges, if any.

For the purpose of making settlement, the Equipment of the Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined)
 (i) an amount equal to 14.91% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (including the supplemental invoice or invoices hereinafter provided for) in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$9,700,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 40 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 40, result in an amount ending in an integral

cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "Indebtedness") but if any Closing Date occurs on or after March 15, 1980, the first and second installments of Indebtedness so incurred in respect of such Closing Date will both be made on September 15, 1980.

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Repayment Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The installments of the Indebtedness shall be payable semiannually on March 15 and September 15 in each year commencing on March 15, 1980, to and including September 15, 1999; provided, however, notwithstanding anything to the contrary herein, if any Equipment is settled for on a Closing Date occurring on or after March 15, 1980, the installment of Indebtedness that would have been payable on March 15, 1980,

if all Closing Dates had occurred prior to March 15, 1980, shall be payable on and together with the installment due on September 15, 1980. The unpaid portion of the Indebtedness shall bear interest from the respective Closing Dates on which incurred at the rate of 9.75% per annum payable to the extent accrued, on March 15 and September 15 in each year, commencing March 15, 1980 (on September 15, 1980, in the case of Indebtedness incurred on or after March 15, 1980). The Railroad may at its option on any March 15 or September 15 commencing on or after September 15, 1994, upon not less than 15 business days' prior written notice to the Agent and the Investors, prepay without premium the entire unpaid Indebtedness together with interest thereon to the date of payment.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after August 1, 1979, and prior to the date set forth in Item 2 of Schedule A hereto (the "Cut-Off Date"), not more than 24 business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; it being understood that any Group of the Equipment accepted prior to the 15th day of each month will be settled for on the 25th day of such month and Equipment accepted on or after the 15th day of each month will be settled for on the 10th day of the following month. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided

in this Article 4 and in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of Indebtedness prior to the date it becomes due.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and shall pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Railroad shall have made all its payments

under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying

event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but no less than 10 days prior to the due date of the next semiannual installment of Indebtedness, in whole or in part, to prepay installments of Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment or cabooses) from the Railroad or others first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence (provided, however, that the Vendor shall not pay more than 85.09% of the cost of any such unit or units of replacement equipment). Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of a mechanical officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment to the Vendor does not exceed 85.09% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 1/20th of such original cost for each year in service. In case any money is applied pursuant to this Article 8 to prepay Indebtedness, it shall be so applied to reduce each installment of Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less an amount which bears the same ratio to the aggregate of all payments made by the Vendee under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with

respect to such Casualty Occurrence bears to the original Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor in such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith in addition to any settlement documents which may be required pursuant to Article 16 hereof:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is

new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/20th of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following and in such manner as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus

such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto to the extent and against risks comparable to those insured against by other railroads on similar equipment and, in any event, comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor the due and punctual performance of all obligations of the Railroad under this Agreement and the Finance Agreement and unconditionally guarantees to the Vendor that all sums payable by the Railroad under this Agreement and the Finance Agreement (including, but not limited to, all sums payable by the Railroad with respect to the Purchase Price of the Equipment) will be promptly paid when due in accordance with the provisions hereof and thereof, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Railroad in any such obligations or payment the Guarantor

agrees punctually to perform or pay the same, irrespective of any enforcement against the Railroad of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligation hereunder shall be absolute and unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Finance Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor; and the Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof or thereof in whole or in part or of any default hereunder or thereunder and all notices with respect to this Agreement or the Finance Agreement and all demands whatsoever hereunder or thereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or under the Finance Agreement or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder or thereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall be subrogated to all rights of the Vendor against the Railroad and with respect to the Equipment to the extent of the amount so paid, but the rights of the Guarantor against the Railroad and with respect to the Equipment pursuant to such subrogation shall be subordinate in all respects to the rights of the Vendor and such rights of the Guarantor shall be enforceable only after, and subject to, full payment to the Vendor of all amounts payable hereunder whether or not then due.

ARTICLE 10. Maintenance; Compliance with Laws.
The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all material respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules

affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use; Leasing. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding one year with any affiliate or any other solvent United States corporation, from and after delivery of such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; pro-

vided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remain in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this Agreement; provided, however, that the Railroad shall not be required to indemnify, protect or hold harmless the Builder from and against any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort (including but not limited to product or strict liability imposed by law upon the Builder) by the

Builder or any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Patent Indemnities; Builder's Warranty. The Builder's warranty of material and workmanship and its patent indemnification agreement are set forth in Items 3 and 4, respectively, of Schedule A hereto. The patent indemnification agreements of the Builder shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever. Anything contained herein to the contrary notwithstanding, with respect to Equipment manufactured by a domestic builder other than the Builder, the Railroad shall first proceed and reasonably exhaust the appropriate remedies available to it against such other builder (before proceeding hereunder against the Builder) of Equipment under the warranties and indemnifications of such other builder with respect to such Equipment.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Articles 8 and 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition (a) to a railroad company wholly owned by the Guarantor or (b) to a railroad company which has outstanding equipment obligations rated within the first three grades by a recognized rating agency of national reputation, is organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to

construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities referred to in Article 15 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 14 and 15 hereof, Schedule A hereto and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad and the Guarantor recognize that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Guarantor each expressly represent for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment of the Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad or the Guarantor against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to the Agent under the Finance Agreement, to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of an amount equal to the Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment of the Builder for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's security interest in such units in the manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur

and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within 10 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 15 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after the commencement of such proceedings; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the Indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may

be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor, as the case may be, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) the Guarantor shall default in any payment of any indebtedness for borrowed money beyond any period of grace provided with respect thereto, and (i) the effect of such default, if it occurs prior to the stated maturity or scheduled date for the payment thereof, is to cause such indebtedness to become due prior to the stated maturity or scheduled date for the payment thereof and (ii) the aggregate principal amount of indebtedness (including the indebtedness, if any, with respect to which there exists a default in payment) which becomes due prior to the stated maturity or scheduled date for payment exceeds \$25,000,000; or if final judgment for the payment of money which exceeds \$1,000,000 shall be rendered against the Guarantor and the same shall not be discharged, or provision made for the discharge thereof in accordance with its terms, within 60 days from the entry thereof, or an appeal therefrom or other appropriate proceeding for the appellate review thereof, shall not be secured or if such appeal be taken and on such appeal the same shall be affirmed and the Guarantor shall not discharge said judgment within 60 days after the entry of the order or decree of affirmance;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued

and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad or the Guarantor.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad, or if the Guarantor has suitable rail storage facilities, at such facilities for the delivery of the Equipment to the

Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad or any affiliate of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad or the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad and the Guarantor agree to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad or the Guarantor requiring specific performance hereof. The Railroad and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is

made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then

in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay

or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and any assignment of this Agreement (including the fees and expenses of an agent, if the assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be

properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad at Meridian & Bigbee Railroad Company, 119 22nd Avenue South, Meridian, Mississippi 39301, attention of Mr. Marvin V. Dendy, President, or to the Guarantor, at American Can Company, American Lane, Greenwich, Connecticut 06830, attention of Mr. C. Richard Pederson, Senior Vice President and General Counsel,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor, the Railroad and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor, the Railroad and the Guarantor.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 22 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Alabama except that perfection shall be governed by the laws of the State of Mississippi; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the

several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located and any rights arising out of the marking on the units of the Equipment.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Agreement shall not be effective unless and until it is executed and delivered in the State of Alabama by the Railroad.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

MERIDIAN & BIGBEE RAILROAD
COMPANY,

[Corporate Seal]

by

Attest:

President

Assistant Secretary

AMERICAN CAN COMPANY,

by

[Corporate Seal]

Attest:

Senior Vice President

Assistant Secretary

ITEL RAILCAR, INC.,

by

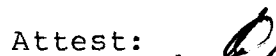
[Signature]
Vice President

~~Vice~~ President

[Corporate Seal]

Attest:

Attest:


Assistant Secretary

Guarantee By ITEL Corporation

Istel Corporation, a Delaware corporation, hereby unconditionally guarantees all of the obligations, representations and warranties of the Builder named in the foregoing Conditional Sale Agreement.

Dated as of May 31, 1979

ITEL CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ALABAMA,)
) ss. :
COUNTY OF CHOCTAW,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is President of MERIDIAN & BIGBEE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF FAIRFIELD,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of AMERICAN CAN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF GEORGIA,)
) ss.:
COUNTY OF COBB,)

On this 7th day of AUG. 1979, before me personally appeared HYBERT P. HAHN, to me personally known, who, being by me duly sworn, says that he is EXECUTIVE VICE PRES. of ITEL RAILCAR, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Lou McCauley
Notary Public

[Notarial Seal]

My Commission Expires

Notary Public, Georgia, State at Large
My Commission Expires Oct. 19, 1982

STATE OF ,)
) ss.:
COUNTY OF ,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

SCHEDULE A

to

Conditional Sale Agreement

Item 1: Itel Railcar, Inc., 1870 The Exchange,
Suite 260, Atlanta, Georgia 31339, attention
of Mr. Hubert P. Hahn, Executive Vice President.

Item 2: September 15, 1980.

Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter in this Schedule A called the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER EXCEPT FOR THE OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 15 OF THE AGREEMENT AND ITEM 4 OF THIS SCHEDULE A.

Item 4: Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability,

claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any unit of Equipment, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Builder, or article or material specified by the Railroad and not manufactured by the Builder, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any unit of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against the Builder, and the use of any unit of Equipment is enjoined, the Builder shall, at its own expense and at its option, either procure for the Railroad the right to continue using such unit of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, the Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Builder for use in or about the construction or operation of the

units of Equipment on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Builder further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to it from which liability may be charged against the Builder hereunder. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

SCHEDULE B

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Load Numbers (Inclusive)</u>	<u>Estimated* Time and Place of Delivery</u>
Iitel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specifification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	63	\$38,000.00	\$2,394,000	MB 500- 5062	August 1979 at Carters- ville, Georgia
Iitel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specifification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	69	\$38,000.00	\$2,622,000	MB 5063- 5131	September 1979 at Carters- ville, Georgia
Iitel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specifification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	108	\$38,000.00	\$4,104,00	MB 5132- 5239	October 1979 at Carters- ville, Georgia
Iitel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specifification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	60	\$38,000.000	\$2,280,000	MB 5240- 5299	November 1979 at Carters- ville, Georgia

* Regardless of individual deliveries in any particular month all deliveries shall be completed by December 31, 1979; provided, however, that in the event the Builder is unable to complete all deliveries of Equipment by December 31, 1979, by reason of any of the causes enumerated in the first sentence of the second paragraph of Article 3 affecting its own manufacturing operations, such date shall be March 31, 1980.

CONDITIONAL SALE AGREEMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

MERIDIAN & BIGBEE RAILROAD COMPANY,
the Railroad

and

AMERICAN CAN COMPANY,
the Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of May 31, 1979,

among

ITEL RAILCAR, INC.,
the Builder

and

THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION),
as Agent

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of May 31, 1979, among each of ITEL RAILCAR, INC. (hereinafter called the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), MERIDIAN & BIGBEE RAILROAD COMPANY, a Mississippi corporation (the "Railroad") and AMERICAN CAN COMPANY, a New Jersey corporation (the "Guarantor").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement shall be assigned to The Chase Manhattan Bank (National Association) acting as agent (the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement") among the Agent, the Railroad, the Guarantor and the parties named in Schedule A thereto (the "Investors"). The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B

hereto and/or purchase from other manufacturers equipment of substantially the same design and specifications (all such units of Equipment with respect to the Builder, regardless of origin, being hereinafter called "its Equipment") and will sell and deliver to the Railroad at the place of delivery set forth in Schedule B hereto or such other builder's manufacturing site, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"), or, in the case of units constructed by other manufacturers, each such unit shall be constructed substantially in accordance with the Specifications. The Builder agrees that the design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission regulations and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent referred to in Article 8 hereof) will be new railroad equipment. The Builder represents and warrants to the Railroad that it or its parent, Itel Corporation, has available to it sufficient order positions with other car manufacturers to comply with the first sentence of this Article 2 (which order positions will continue to be available in order to satisfy the Builder's obligations hereunder). Anything contained herein to the contrary notwithstanding, the Builder agrees that (a) the Railroad will receive first priority on Equipment manufactured by it at its plant at Cartersville, Georgia, and (b) the Builder will not sell and deliver to the Railroad any Equipment manufactured by other manufacturers unless expressly consented to by the Railroad.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid by the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified

in clause (c) or (d) of Article 17 hereof or if any event of default (as described in said Article 17), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing. It is understood by the Builder that with respect to the outside delivery date of December 31, 1979, of the Equipment, time is of the essence.

The Builder's obligation as to time of delivery with respect to its own equipment and to equipment originating from other car manufacturers is subject, however, to delays resulting from causes beyond the Builder's and such other car manufacturers' reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors; provided, however, that the foregoing limitations on the delivery obligations of the Builder shall only be operative and effective when the causes enumerated above prevent delivery by both the Builder to the Railroad and such other car manufacturers to the Builder. In the event the Builder's failure to deliver Equipment is excused beyond March 31, 1980, by the preceding sentence, the Railroad shall have the option, exercised by written notice to the Builder, at any time subsequent to March 31, 1980, to exclude from this Agreement, without further obligation of either party, any unit or units of Equipment not yet delivered and accepted pursuant to Article 4 hereof.

Any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence or the last sentence of the preceding paragraph, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom and, unless excluded pursuant to the last sentence of the preceding paragraph, a separate purchase order agreement applying to the excluded units containing the applicable provisions of this Agreement other than the financing terms. If the Builder's failure to deliver Equipment excluded from this Agreement (other than an exclusion pursuant to the last sentence of the preceding paragraph) was excused by any of the causes enumerated in the preceding paragraph, the Builder shall deliver such Equipment as soon as available (but in any event not later than March 31, 1981), in which

case the Railroad shall accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder. In the event the Builder is still unable to deliver Equipment by March 31, 1981, by reason of any of the causes enumerated in the preceding paragraph, neither the Railroad nor the Builder shall have any obligation with respect to Equipment not delivered and accepted pursuant to Article 4 hereof on or before March 31, 1981.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder shall inspect all materials used in the construction of its Equipment in accordance with its standard quality control practices and shall grant authorized inspectors of the Railroad the right to such similar inspections as the Railroad may request. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

All of the foregoing paragraph shall apply with respect to any unit of Equipment originating from any other manufacturer in that the Builder shall arrange for the same rights of inspection of materials and construction for the authorized inspectors of the Railroad at such other manufacturer's plant during construction and an inspection by such authorized representatives upon completion of each unit at such other manufacturer's plant prior to the Builder's acceptance from any order position relating to such unit.

On acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the

risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such acceptance shall not thereby relieve the Builder of its warranty referred to in Article 15 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad pursuant to Purchase Order No. 3891 dated November 27, 1978, from the Railroad to the Builder and Specification No. 78-3 (W.O. 0101) dated September 20, 1978, and revised November 16, 1978. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, plus freight charges, if any.

For the purpose of making settlement, the Equipment of the Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined)
 (i) an amount equal to 14.91% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (including the supplemental invoice or invoices hereinafter provided for) in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$9,700,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 40 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 40, result in an amount ending in an integral

cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "Indebtedness") but if any Closing Date occurs on or after March 15, 1980, the first and second installments of Indebtedness so incurred in respect of such Closing Date will both be made on September 15, 1980.

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Repayment Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The installments of the Indebtedness shall be payable semiannually on March 15 and September 15 in each year commencing on March 15, 1980, to and including September 15, 1999; provided, however, notwithstanding anything to the contrary herein, if any Equipment is settled for on a Closing Date occurring on or after March 15, 1980, the installment of Indebtedness that would have been payable on March 15, 1980,

if all Closing Dates had occurred prior to March 15, 1980, shall be payable on and together with the installment due on September 15, 1980. The unpaid portion of the Indebtedness shall bear interest from the respective Closing Dates on which incurred at the rate of 9.75% per annum payable to the extent accrued, on March 15 and September 15 in each year, commencing March 15, 1980 (on September 15, 1980, in the case of Indebtedness incurred on or after March 15, 1980). The Railroad may at its option on any March 15 or September 15 commencing on or after September 15, 1994, upon not less than 15 business days' prior written notice to the Agent and the Investors, prepay without premium the entire unpaid Indebtedness together with interest thereon to the date of payment.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after August 1, 1979, and prior to the date set forth in Item 2 of Schedule A hereto (the "Cut-Off Date"), not more than 24 business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; it being understood that any Group of the Equipment accepted prior to the 15th day of each month will be settled for on the 25th day of such month and Equipment accepted on or after the 15th day of each month will be settled for on the 10th day of the following month. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided

in this Article 4 and in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of Indebtedness prior to the date it becomes due.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and shall pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Railroad shall have made all its payments

under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying

number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or the name of the Vendor followed by the words "Agent, Owner", or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title and interests in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed by the Railroad in all public offices where this Agreement shall have been filed.

Except as provided in the preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, obsolete, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall fully inform the Vendor in regard thereto promptly after it has knowledge of such Casualty Occurrence. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$200,000 (or such lesser amount as the Railroad may elect), the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such

event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth such Casualty Value.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but no less than 10 days prior to the due date of the next semiannual installment of Indebtedness, in whole or in part, to prepay installments of Indebtedness or, in whole or in part, toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment or cabooses) from the Railroad or others first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence (provided, however, that the Vendor shall not pay more than 85.09% of the cost of any such unit or units of replacement equipment). Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of a mechanical officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment to the Vendor does not exceed 85.09% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 1/20th of such original cost for each year in service. In case any money is applied pursuant to this Article 8 to prepay Indebtedness, it shall be so applied to reduce each installment of Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less an amount which bears the same ratio to the aggregate of all payments made by the Vendee under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with

respect to such Casualty Occurrence bears to the original Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title and interests of the Vendor in such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith in addition to any settlement documents which may be required pursuant to Article 16 hereof:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than passenger or work equipment or cabooses) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is

new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/20th of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following and in such manner as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus

such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto to the extent and against risks comparable to those insured against by other railroads on similar equipment and, in any event, comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor the due and punctual performance of all obligations of the Railroad under this Agreement and the Finance Agreement and unconditionally guarantees to the Vendor that all sums payable by the Railroad under this Agreement and the Finance Agreement (including, but not limited to, all sums payable by the Railroad with respect to the Purchase Price of the Equipment) will be promptly paid when due in accordance with the provisions hereof and thereof, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Railroad in any such obligations or payment the Guarantor

agrees punctually to perform or pay the same, irrespective of any enforcement against the Railroad of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligation hereunder shall be absolute and unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Finance Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor; and the Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof or thereof in whole or in part or of any default hereunder or thereunder and all notices with respect to this Agreement or the Finance Agreement and all demands whatsoever hereunder or thereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or under the Finance Agreement or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder or thereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall be subrogated to all rights of the Vendor against the Railroad and with respect to the Equipment to the extent of the amount so paid, but the rights of the Guarantor against the Railroad and with respect to the Equipment pursuant to such subrogation shall be subordinate in all respects to the rights of the Vendor and such rights of the Guarantor shall be enforceable only after, and subject to, full payment to the Vendor of all amounts payable hereunder whether or not then due.

ARTICLE 10. Maintenance; Compliance with Laws.
The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all material respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules

affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use; Leasing. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the units of Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding one year with any affiliate or any other solvent United States corporation, from and after delivery of such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; pro-

vided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remain in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this Agreement; provided, however, that the Railroad shall not be required to indemnify, protect or hold harmless the Builder from and against any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort (including but not limited to product or strict liability imposed by law upon the Builder) by the

Builder or any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Patent Indemnities; Builder's Warranty. The Builder's warranty of material and workmanship and its patent indemnification agreement are set forth in Items 3 and 4, respectively, of Schedule A hereto. The patent indemnification agreements of the Builder shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever. Anything contained herein to the contrary notwithstanding, with respect to Equipment manufactured by a domestic builder other than the Builder, the Railroad shall first proceed and reasonably exhaust the appropriate remedies available to it against such other builder (before proceeding hereunder against the Builder) of Equipment under the warranties and indemnifications of such other builder with respect to such Equipment.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Articles 8 and 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition (a) to a railroad company wholly owned by the Guarantor or (b) to a railroad company which has outstanding equipment obligations rated within the first three grades by a recognized rating agency of national reputation, is organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to

construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities referred to in Article 15 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 14 and 15 hereof, Schedule A hereto and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad and the Guarantor recognize that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Guarantor each expressly represent for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment of the Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad or the Guarantor against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to the Agent under the Finance Agreement, to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of an amount equal to the Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment of the Builder for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's security interest in such units in the manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur

and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within 10 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 15 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after the commencement of such proceedings; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the Indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may

be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor, as the case may be, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) the Guarantor shall default in any payment of any indebtedness for borrowed money beyond any period of grace provided with respect thereto, and (i) the effect of such default, if it occurs prior to the stated maturity or scheduled date for the payment thereof, is to cause such indebtedness to become due prior to the stated maturity or scheduled date for the payment thereof and (ii) the aggregate principal amount of indebtedness (including the indebtedness, if any, with respect to which there exists a default in payment) which becomes due prior to the stated maturity or scheduled date for payment exceeds \$25,000,000; or if final judgment for the payment of money which exceeds \$1,000,000 shall be rendered against the Guarantor and the same shall not be discharged, or provision made for the discharge thereof in accordance with its terms, within 60 days from the entry thereof, or an appeal therefrom or other appropriate proceeding for the appellate review thereof, shall not be secured or if such appeal be taken and on such appeal the same shall be affirmed and the Guarantor shall not discharge said judgment within 60 days after the entry of the order or decree of affirmance;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued

and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad or the Guarantor.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad, or if the Guarantor has suitable rail storage facilities, at such facilities for the delivery of the Equipment to the

Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad or any affiliate of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad or the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad and the Guarantor agree to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad or the Guarantor requiring specific performance hereof. The Railroad and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is

made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then

in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay

or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and any assignment of this Agreement (including the fees and expenses of an agent, if the assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be

several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located and any rights arising out of the marking on the units of the Equipment.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

This Agreement shall not be effective unless and until it is executed and delivered in the State of Alabama by the Railroad.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

MERIDIAN & BIGBEE RAILROAD
COMPANY,

[Corporate Seal]

by

Attest:

President

Assistant Secretary

AMERICAN CAN COMPANY,

by

[Corporate Seal]

Attest:

Senior Vice President

Assistant Secretary

ITEL RAILCAR, INC.,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

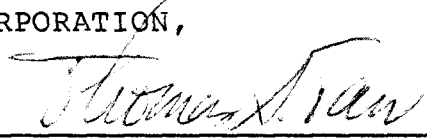
Guarantee By Itel Corporation

Itel Corporation, a Delaware corporation, hereby unconditionally guarantees all of the obligations, representations and warranties of the Builder named in the foregoing Conditional Sale Agreement.

Dated as of May 31, 1979

ITEL CORPORATION,

by



Vice President

[Corporate Seal]

Attest:



Assistant Secretary

SCHEDULE A

to

Conditional Sale Agreement

Item 1: Itel Railcar, Inc., 1870 The Exchange, Suite 260, Atlanta, Georgia 31339, attention of Mr. Hubert P. Hahn, Executive Vice President.

Item 2: September 15, 1980.

Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter in this Schedule A called the "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER EXCEPT FOR THE OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 15 OF THE AGREEMENT AND ITEM 4 OF THIS SCHEDULE A.

Item 4: Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability,

claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of any unit of Equipment, of any design, article or material which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Builder, or article or material specified by the Railroad and not manufactured by the Builder, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. In case any unit of Equipment is held to constitute infringement of any patent or any similar right in respect of which liability may be charged against the Builder, and the use of any unit of Equipment is enjoined, the Builder shall, at its own expense and at its option, either procure for the Railroad the right to continue using such unit of Equipment or replace the same with noninfringing equipment or modify it so that it becomes noninfringing. Without intending any limitation of the foregoing, the Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Builder for use in or about the construction or operation of the

units of Equipment on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Builder further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to it from which liability may be charged against the Builder hereunder. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

SCHEDULE B

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated* Time and Place of Delivery</u>
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	63	\$38,000.00	\$2,394,000	MB 5000- 5062	August 1979 at Carters- ville, Georgia
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	69	\$38,000.00	\$2,622,000	MB 5063- 5131	September 1979 at Carters- ville, Georgia
Itel Railcar Incor- porated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	108	\$38,000.00	\$4,104,00	MB 5132- 5239	October 1979 at Carters- ville, Georgia
Itel ilcar Incor- rated	70-ton 50.5 ft. Box Cars with rigid underframes	XM, with Plate C	Specification No. 78-3 (W.O. 0101)	Carters- ville, Georgia	60	\$38,000.000	\$2,280,000	MB 5240- 5299	November 1979 at Carters- ville, Georgia

* Regardless of individual deliveries in any particular month all deliveries shall be completed by December 31, 1979; provided, however, that in the event the Builder is unable to complete all deliveries of Equipment by December 31, 1979, by reason of any of the causes enumerated in the first sentence of the second paragraph of Article 3 affecting its own manufacturing operations, such date shall be March 31, 1980.

STATE OF ,)
) ss.:
COUNTY OF ,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of ITEL RAILCAR, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

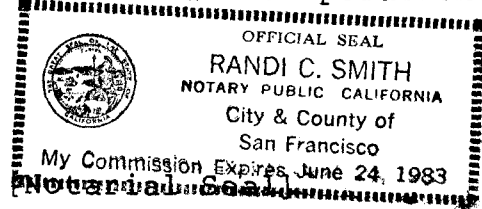
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF *California* ,)
) ss.:
COUNTY OF *San Francisco* ,)

On this *2nd* day of *August* 1979, before me personally appeared *Thomas L. Jan* , to me personally known, who, being by me duly sworn, says that he is *Executive V.P.* of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was executed, signed, sealed and delivered on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Randi C. Smith

Notary Public

My Commission Expires

